

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0838**

State of Minnesota,  
Respondent,

vs.

Kelsey Anne Weidell,  
Appellant.

**Filed May 8, 2023  
Affirmed  
Smith, Tracy M., Judge**

Ramsey County District Court  
File No. 62-CR-21-3089

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,  
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant State  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and  
Cochran, Judge.

**NONPRECEDENTIAL OPINION**

**SMITH, TRACY M., Judge**

In this direct appeal from the judgment of conviction for first-degree assault, appellant Kelsey Anne Weidell argues that the district court abused its discretion by denying her motion for a downward dispositional departure. We affirm.

## **FACTS<sup>1</sup>**

On May 17, 2021, police responded to an apartment building in St. Paul based on a report that a man had been run over by a black SUV. Witnesses told police that they saw Weidell intentionally drive her SUV into a group of fighting people, striking two people and running over L.H. Then, the SUV went into reverse and ran over L.H. for a second time before fleeing the scene. L.H. suffered severe injuries to his waist, legs, and hips.

The state charged Weidell with one count of first-degree assault pursuant to Minnesota Statutes section 609.221, subdivision 1 (2020), and two counts of second-degree assault pursuant to Minnesota Statutes section 609.222, subdivision 1 (2020). Weidell pleaded guilty to first-degree assault, and the state dismissed the remaining charges.

Weidell filed a motion for a downward dispositional departure or, in the alternative, for a downward durational departure. Neither the state nor the probation department supported a departure. At the sentencing hearing, the district court heard victim impact statements, reviewed a presentence-investigation report, and expressly stated that it “read and considered all of the statements of support as well as [Weidell’s] letter expressing remorse, arguments of [her] attorney, as well as [Weidell’s] statement both in court and in writing.” Although the district court recognized that Weidell had a criminal history score of zero and had “turned [her] life around,” it denied Weidell’s motion and sentenced her to a presumptive executed sentence of 86 months in prison.

Weidell appeals.

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<sup>1</sup> These undisputed facts are taken from the complaint.

## DECISION

Weidell argues that the district court abused its discretion by denying her motion for a downward dispositional departure because multiple factors demonstrate that she is particularly amenable to probation.

The Minnesota Sentencing Guidelines establish presumptive sentences to “maintain uniformity, proportionality, rationality, and predictability in sentencing.” Minn. Stat. § 244.09, subd. 5 (2022). A district court may depart from the sentencing guidelines “only if aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (emphasis omitted) (quotations and citations omitted); Minn. Sent’g Guidelines 2.D.1 (2020). But, even if substantial and compelling circumstances are present, a district court is not required to depart from the guidelines. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018); Minn. Sent’g Guidelines 2.D.1; *see, e.g., State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). District courts are afforded a great deal of discretion in the imposition of sentences, and appellate courts review for an abuse of that discretion. *Soto*, 855 N.W.2d at 307-08. Only in a “rare case” will an appellate court “reverse the imposition of a presumptive sentence.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011).

A downward dispositional departure is generally based on characteristics of the defendant showing that the defendant is particularly amenable to probation. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). Particular amenability to probation may constitute a substantial and compelling reason for a downward dispositional departure. *Id.*

Various factors, including “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family” are all relevant to determining whether a defendant is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). These factors are often referred to as the *Trog* factors. *See Pegel*, 795 N.W.2d at 253.

Weidell argues that the district court abused its discretion by denying her motion for a dispositional departure because the *Trog* factors demonstrate that she is particularly amenable to probation. Weidell highlights her genuine remorse, amenability to substance and psychological treatment, successful record on pretrial release and probation, criminal-history score of zero, demonstrated motivation to change, and community support.

The district court considered the arguments of the parties and all the information presented. It recognized that Weidell had no criminal history; that, since Weidell had been released, she had turned her life around and “made many steps in the right direction” for her and her children; and that her remorse was sincere. Stating that it was not “an easy decision,” the district court decided, after “serious consideration of all of the facts and circumstances of this case,” to deny a departure and impose a presumptive sentence.

District courts are afforded “great discretion” in sentencing. *State v. Vang*, 847 N.W.2d 248, 264 (Minn. 2014). Even though the district court recognized that multiple *Trog* factors weighed in Weidell’s favor, it was within its discretion to nevertheless choose not to depart. *See Walker*, 913 N.W.2d at 468; Minn. Sent’g Guidelines 2.D.1. In essence, Weidell asks us to substitute our judgment for that of the district court, which we may not

do. *See Vang*, 847 N.W.2d at 264. This is not the “rare case” that requires reversal of a presumptive sentence. *See Pegel*, 795 N.W.2d at 253.

**Affirmed.**